

## **Rule 4**

### **INTERLOCAL RISK MANAGEMENT AGENCY**

#### **Rule**

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#### **§ 1. Authority**

This rule is adopted by the Commissioner of Insurance pursuant to the authority vested in him by Title 22, Section 2, Louisiana Revised Statutes of 1950 and Act 462 of the 1979 Session of the Louisiana Legislature.

**History.**—Eff. 9-18-90.

#### **§ 2. Purpose**

The purpose of this rule is to adopt provisions and uniform guidelines for their interpretation as authorized specifically by Act 462 of the 1979 Session of the Legislature. This rule is designed to facilitate and implement the provisions of that Act. It is intended to supplement, not alter in any manner, the provisions of the Act.

**History.**—Eff. 9-18-90.

#### **§ 3. Applicability**

These provisions shall be applicable to any and all entities which may

be defined an "interlocal risk management agency" by Act 462 of the 1979 Session of the Louisiana Legislature.

History.—Eff. 9-18-90.

#### § 4. Definitions

When used in this rule, the following words or terms have the meaning described in this section.

(1) "Department" means the Insurance Department of the State of Louisiana.

(2) "Loss Fund" means the retention of risk sharing for an interlocal risk management agency under the terms of an aggregate excess contract or contracts.

(3) "Trustees" means the executive boards of the Louisiana Municipal Association or of the Policy Jury Association of Louisiana, as the case may be, where those bodies have been designated in an inter governmental agreement to administer an interlocal risk management agency or such members of such executive boards as do not decline to serve as trustees. In all other cases, "trustee" means a group of members elected by the interlocal risk management agency for stated terms of office, to administer a group self-insurance fund, and whose duties shall include responsibilities for approving applications for new members of such fund. A trustee shall not be an owner, officer or employee of the service agent.

(4) "Service Agent" means a business which contracts with an interlocal risk management agency for the purpose of providing all services necessary to place and maintain a group self-insurance program.

(5) "Trustee Fund" means any monies and investments under the control of the board of trustees of a self-insurance fund which are not part of the loss fund or which are not required to pay claims.

(6) "Gross Premium" means the premium determined by multiplying the payroll or other unit of exposure (segregated into the proper workmen's compensation job classification or general liability classification) times the appropriate manual rates.

(7) "Standard Premium" means gross premium plus or minus applicable experience modification.

(8) "Normal Premium" means the standard premium less any discount allowed.

(9) "Manual Rate" means for workmen's compensation purposes that rate filed by and approved for use in the state by the National Council on Compensation Insurance. For public liability exposure, the term means that rate filed by, and approved for use by the Insurance Services Office.

(10) "Experience Modification" means the applicable experience debit or credit promulgated in accordance with those experience rating plans filed by and approved for the National Council on Compensation Insurance or the Insurance Services Office.

(11) "Fund" means the interlocal risk management agency self-insurers fund.

(12) "Certified Audit" means an audit upon which the auditor expresses his professional opinion that the accompanying statements present fairly the financial position of the self-insurance fund in conformity with generally accepted accounting principles consistently applied, and accordingly include such tests of the accounting records and such other auditing procedures as considered necessary by such auditor.

(13) "Net Safety Factor" means any amount needed in a given fund year, in addition to current loss reserves to fund future loss development.

(14) "Contingent Liability" means the amount that the interlocal risk management agency may be obligated to pay in excess of a given year's normal premium collected or on hand.

(15) "Surplus" means all other assets a fund may have on hand in excess of all loss reserves, actual and contingent liabilities and net safety factors in all fund years.

(16) "Statutory Workmens Compensation Benefits" means those prescribed by Title 23, Louisiana Revised Statutes of 1950, as amended.

History.—Eff. 9-18-90.

## **§ 5. Requirements necessary to obtain a certificate of authority as an interlocal risk management agency**

(1) Evidence must be submitted to the Insurance Department that two or more local government subdivisions have made and executed

agreements among themselves to form and become members of an interlocal risk management agency.

(2) Copies of the by-laws and other agreements must be submitted to the Insurance Department.

(3) A copy of the ordinance or other enabling act that is adopted by the political subdivisions authorizing execution of an agreement to form an interlocal risk management agency must be submitted to the Department of Insurance.

(4) Each interlocal risk management agency must identify its agent for service of process to the Department of Insurance.

(5) Each fund must have an annual gross premium calculated in accordance with the applicable manual premium rate or rates, plus or minus applicable experience credits or debits, of not less than two hundred thousand (\$200,000.00) dollars.

(6) An interlocal risk management agency must at all times maintain a contract or contracts of aggregate excess insurance of at least five million (\$5,000,000.00) dollars as respects public liability claims if a fund is formed to self insure public liability claims.

(7) An interlocal risk management agency must at all times maintain a contract or contracts of specific excess insurance as respects workmen's compensation claims. Those contracts must provide for statutory workmen's compensation benefits which shall include provisions for unlimited medical and rehabilitation expenses, except that interlocal risk management agencies that are in existence prior to September 1, 1980 shall be deemed to be in compliance with this rule provided a contract or contracts of specific excess insurance has been submitted with a limit of liability in the amount of at least one million (\$1,000,000.00) dollars. On the first renewal date following September 1, 1980, the exception shall not be applicable.

(8) Each interlocal risk management agency must provide statutory workmen's compensation benefits. A contract or contracts of excess insurance as provided in (7) above shall be provided to secure payment of statutory workmen's compensation benefits.

(9) A copy of each contract of excess and aggregate insurance must be filed with the Department of Insurance.

(10) Each risk contract must contain a provision that the Department of Insurance will be notified not less than 30 days in advance in the

event of cancellation of the contract by action of either the interlocal risk management agency or the insurance company that issued the contract.

**History.**—Eff. 9-18-90.

#### **§ 6. Filing of reports**

(1) A certified audited financial statement must be submitted annually. That statement must contain a review of the interlocal risk management agency operations and general conditions by a certified independent casualty actuary. During the first two years of the existence of the interlocal risk management agency, the Commissioner of Insurance or his Chief Examiner may require periodic interim financial reports. Those reports may be required on a basis no more frequent than quarterly.

(2) That statement of financial condition must include a report of the outstanding workmen's compensation liabilities of the interlocal risk management agency, and include details of the amount and source of all monies recoverable from any third party.

(3) Summary loss data shall be filed with the Department of Insurance on each fund member within sixty (60) days after the evaluation date of the losses being reported in a manner acceptable to the Department of Insurance.

(4) Classified, audited, and properly limited payrolls and premium development on each fund member shall be submitted to the Insurance Department on acceptable forms within sixty (60) days after the evaluation date of the summary loss information required in (3) above.

(5) All of the information required in (4) above shall be submitted using classification, payroll limitations, experience modification and rate procedure of the National Council on Compensation Insurance or in the case of public liability those of Insurance Services Office, as filed and approved for use in this state.

(6) Failure or refusal of the interlocal risk management agency to file these reports in accordance with this Rule, shall be considered good cause to suspend or refuse renewal of the Certificate of Authority issued by the Commissioner of Insurance.

**History.**—Eff. 9-18-90.

**§ 7. Solvency of risk management agencies; trustee responsibilities**

(1) In order to insure the financial stability of the operations of each interlocal risk management agency, the board of trustees of each fund shall be responsible for all operations of the fund. The board of trustees of each agency shall take all necessary precautions to safeguard the assets of the fund or funds of such agency including:

(a) The designation of a fiscal agent or administrator, if not otherwise provided for by Act 462 of the 1979 Regular Session of the Louisiana Legislature to administer the financial affairs of the fund, which as obligee, shall furnish a fidelity bond, or acceptable substitute, to protect the fund against misappropriations or mis-use of any monies or securities. The amount of the bond, or substitution therefore shall be determined by the interlocal risk management agency subject to approval by the Insurance Department. Such fiscal agent or administrator shall not be an owner, officer or employee of the service agent.

(b) Retain control of all monies collected or disbursed from the fund or funds and shall segregate all monies into a claims fund and trustee fund. The amount allocated to the claims fund will be sufficient to cover payment of the entire aggregate loss fund as defined in the aggregate excess insurance policy. Only disbursements that are credited toward the loss fund (as defined in the aggregate excess policy) will be made from the claims fund. All administration costs and other disbursements will be made from the trustee fund. The Administrator of the fund, shall establish a revolving fund for use by the authorized service agent, which will be replenished from time to time from the claims fund. The service agent and its employees shall be covered by a fidelity bond, with the interlocal risk management agency named as obligee in an amount sufficient to protect all monies placed in the revolving fund. Such bond and its amount shall be subject to approval by the Insurance Department.

(c) Audit of the accounts and records as provided for in Act 462 of the 1979 Regular Session of the Louisiana Legislature.

(d) The board of trustees or its fiscal agent or administrator shall not utilize any of the monies collected as premiums for any purpose unrelated to workmen's compensation or public liability purposes. Further, it shall not borrow any monies from the fund or in the name of the fund without advising the Department of Insurance of the nature and purpose of the loan and obtaining approval. The board of trustees may, at

its discretion, invest any surplus monies not needed for current obligations, but such investments shall be limited to bonds of the state of Louisiana or its political subdivisions, United States government bonds or securities, United States treasury notes, investment share accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit issued by a duly chartered commercial bank, prime commercial paper, and repurchase agreements, and preapproved first mortgage loans on commercial real estate owned by the Fund Administrator, located within the State of Louisiana and occupied by the Fund and/or its Trustees, Administrator or Third Party Administrator. Deposits in savings and loan associations and commercial banks shall be limited to institutions in this state except in those instances where higher interest rates paid on deposits by such institutions in other states will provide better investment income and such deposits shall not exceed the federally insured amount in any one account, except that the federally insured amount on any one may be exceeded if the amount involved in such an account does not exceed the greater of either of the two following factors:

(i) Five percent (5%) of the combination of surplus and undivided profits and reserves as currently reported for each bank in this state in the banking division annual report of the Financial Institutions Office of the Department of Commerce (banking control) or financial reports filed with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and Federal Reserve Bank of Atlanta.

(ii) Five hundred thousand (\$500,000.00) dollars per institution.

(2) The board of trustees may delegate authority for specific functions to the administrator of the self-insurers' fund. The functions which may be delegated include, but are not limited to, such matters as contracting with a service agent, determining the premium charged to and refunds payable to members, investing surplus monies subject to the restrictions set forth in subdivision (d) of subrule 1, and approving applications for membership. All delegated authority shall be specifically defined in the written minutes of the trustees' meetings and shall be subject to final approval.

History.—Eff. 9-18-90.

**§ 8. Interlocal risk management self-insurance funds; advance premium discounts; surplus distribution; deficit**

(1) The trustees of any interlocal risk management agency shall not

allow advance premium discounts to any member in excess of that allowed by the excess insurance underwriter, subject however, to a maximum of fifteen percent (15%) of their standard premium.

(2) Any surplus monies for a fund year in excess of the amount necessary to fulfill all obligations under the workmen's compensation act for that fund year, including a provision for claims incurred, but not reported and related expenses, may be declared to be refundable by the trustees at any time, and the amount of such declaration shall be a fixed liability of the fund at the time of the declaration. The date of payment shall be as agreed by the trustees except that surplus monies not needed to satisfy the loss fund requirements (i.e., trustees' funds), as established by the aggregate excess contract, may be refunded immediately after the end of the fund year with the approval of the Commissioner of Insurance. The intent of this rule is to ensure that sufficient monies are retained in the funds to assure that total assets are two hundred thousand (\$200,000.00) dollars greater than total liabilities for each fund year.

(3) In the event of a deficit in any fund year, the deficit shall be made up immediately from any of the following:

(a) Unencumbered surplus from a fund year other than the current fund year.

(b) Trustees' funds.

(c) By assessment of the membership of the deficit fund year if ordered.

(d) By such alternative method as the Commissioner of Insurance may approve.

(e) By reduction or elimination of the advance premium discount provided to members.

The Commissioner of Insurance shall be notified before any transfer of unencumbered surplus funds and of any method utilized to eliminate a deficit.

History.—Eff. 9-18-90.

**§ 9. Aggregate excess insurance; interlocal risk management agency; self-insurance**

(1) No contract or policy of aggregate excess insurance shall be



recognized in considering the ability of an applicant to indemnify the financial obligations of its members under the workmen's compensation act, unless such contract or policy complies with all of the following:

(a) Is issued by a casualty insurance company authorized to transact such business in this state, or a licensed resident surplus lines broker,

(b) Is not cancellable or nonrenewable unless written notice by registered or certified mail is given to the other party to the policy and to the Commissioner of Insurance not less than 30 days before termination by the party desiring to cancel or not renew the policy.

(c) Any contract or policy containing any type of commutation clause shall provide that any commutation effected thereunder shall not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation and which are subsequently reopened by or through a competent authority. If the underwriter purposes to settle their liability for future payments payable as compensation for accidents occurring during the term of the policy by the payment of a lump sum to the interlocal risk management agency, to be fixed as provided in the commutation clause of the policy, then not less than 30 days prior notice of such commutation shall be given to the Insurance Department by the underwriter(s) or its (their) agent by registered or certified mail. If any commutation is effected, then the Commissioner of Insurance shall have the right to direct that such sum be placed in trust for the benefit of the loss fund.

(d) All of the following shall be applied toward the reaching of the retention level in the aggregate excess contract:

(i) Payments made by the employer.

(ii) Payments due and owing to claimants of the employers.

(iii) Payments made on behalf of the employers by any surety bond under a bond required by the Commissioner of Insurance.

(iv) Payments made by the Interlocal Risk Management Agency security fund.

(e) Copies of the complete policy of aggregate excess insurance shall be filed with the Commissioner of Insurance, together with a certification that such policy fully complies with this rule and applicable statutes.

History.—Eff. 9-18-90.

**§ 10. Servicing interlocal risk management agencies;  
application; requirements; noncompliance**

(1) Any individual, co-partnership, or corporation desiring to engage in the business of providing one or more services for an approved workmen's compensation program for an interlocal risk management agency shall apply to, and shall satisfy the Commissioner of Insurance that it has adequate facilities and competent staff within the state of Louisiana to service the self-insurance program in such a manner as to fulfill the employers' obligations under the workmen's compensation act and any rules and regulations applicable thereto. Service may include, but is not limited to, claims adjusting, industrial safety engineering, underwriting, and the capacity to provide required reporting.

(2) Application for approval to act as a servicing agent for an interlocal risk management agency shall be made on the required form. The application shall contain answers to all questions propounded and shall be sworn to and approved before the service agent enters into a contract with an interlocal risk management agency. Applications for approval to act as a service agent shall be granted for a period of one (1) year and shall be subject to renewal annually.

(3) If the service agent seeks approval to service claims, then proof shall be required that it has within its organization, or has contracted on a full-time basis with, at least one (1) person who has the knowledge and experience necessary to handle claims involving the workmen's compensation act and public liability. A resume covering that person or person's background shall be attached to the application of the service agent.

(4) If the service agent seeks approval to provide underwriting services, then proof shall be required that it has within its organization, or has contracted on a full-time basis with, at least one (1) person who has the knowledge and experience necessary to provide underwriting services for workmen's compensation excess insurance and public liability coverage. A resume covering that person or person's background shall be attached to the application of the service agent.

(5) If the service agent seeks approval to furnish safety engineering services, then proof shall be required that it has within its organization, or has contracted on a full-time basis with at least one (1) person who has the knowledge and background necessary to adequately provide industrial safety and health engineering services.

(6) The service agent shall maintain adequate staff and the staff shall be authorized to act for the service agent on all matters covered by the workmen's compensation act and rules and regulations applicable thereto.

(7) The service agent shall file copies of all contracts entered into with interlocal risk management agencies as they relate to the services to be performed. Such reports shall be kept confidential. The service agent will handle all claims with dates of injury or disease within the contract period until their conclusion unless the service agent is relieved of that responsibility by a successor service agent.

(8) Failure to comply with the provisions of the workmen's compensation act shall be considered good cause for withdrawal of the approval to act as a service agent. Thirty (30) days notice of withdrawal shall be given and notice shall be served by certified or registered mail upon all interested parties.

**History.**—Eff. 9-18-90.

#### **§ 11. Penalty for non-compliance**

Non-compliance with the provisions of this Rule may result in suspension, revocation or non-renewal of the Certificate of Authority issued by the Commissioner of Insurance pursuant to the provisions of Act 462 of the 1979 Session of the Louisiana Legislature.

**History.**—Eff. 9-18-90.

#### **§ 12. Severability**

If any of the provisions of this Rule are held invalid, such invalidity shall not affect other provisions which can be given effect with the invalid item, and to this end the provisions of this Rule are hereby declared severable.

**History.**—Eff. 9-18-90.